

CHAPTER NO. 141

SENATE BILL NO. 1901

By Dixon, Herron, Trail, Kyle

Substituted for: House Bill No. 1719

By Curtiss, Bowers, Crider, Lynn, Henri Brooks, Brown, Shaw

AN ACT to amend Tennessee Code Annotated, Title 45; Title 47 and Title 62, Chapter 37, Part 1, relative to certain loan transactions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-13-103(c), is amended by deleting subdivision (4) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 45-13-103(a), is amended by adding the following language at the end of the subsection:

Provided, that no contractor or home improvement contractor or other person who supplies materials and renders services in the improvement of real property shall engage in the business of making mortgage loans or of being a mortgage loan servicer or mortgage loan broker in this state.

SECTION 3. Tennessee Code Annotated, Title 45, Chapter 13, Part 1, is amended by adding the following language as a new, appropriately designated section:

45-13-123. (a) A licensee or registrant shall not make any payments to a contractor or home improvement contractor from proceeds of a mortgage loan for home improvement other than:

(1) In the form of an instrument that is payable to the borrower or jointly to the borrower and the contractor or home improvement contractor; or

(2) At the election of the borrower by a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the licensee or registrant, and the contractor or home improvement contractor prior to the date of payment.

(b) A licensee or registrant shall not permit a contractor or home improvement contractor to be a cosigner or to act as a guarantor for a mortgage loan for home improvement.

(c) As used in this section, "mortgage loan for home improvement" means a consumer credit mortgage loan transaction involving property located within this state regardless of the amount of the loan.

(d) The commissioner is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) for each violation of this section after notice and an opportunity for a hearing.

SECTION 4. Tennessee Code Annotated, Section 62-37-112, is amended by adding the following language as a new, appropriately designated subsection:

(14)(A) Having a controlling ownership interest in the lender providing a mortgage loan for home improvement for the work being performed by the home improvement contractor; or

(B) Being a cosigner or acting as a guarantor for a mortgage loan for home improvement.

As used in this subsection, "mortgage loan for home improvement" shall have the same meaning as defined in § 45-13-123(c).

SECTION 5. Tennessee Code Annotated, Title 62, Chapter 37, Part 1, is amended by adding the following language as a new, appropriately designated section:


62-37-135. (a) The board is authorized to impose a civil penalty in an amount not to exceed twenty-five thousand dollars (\$25,000) per violation for a violation of § 62-37-112(3), (4) or (14) after notice and an opportunity for a hearing. Such penalty shall be in addition to any other penalty authorized pursuant to this part.

(b) In addition to the civil penalty authorized pursuant to subsection (a), a violation of § 62-37-112 (3), (4) or (14) shall be construed to constitute an unfair or deceptive act or practice affecting the conduct of trade or commerce under the Tennessee Consumer Protection Act, and as such the private right of action remedy under such act shall be available to any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated as a result of such violation.

SECTION 6. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 5, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of May 2003


PHIL BREDESEN, GOVERNOR